SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, Plaintiffs, - against - JOHN C. MOORE, ROBERT HINKLE, MICHAEL LAKOW, DIANA PIKULSKI, HAYWARD R. PRESSMAN, LESLIE PRIGGEN, JOHN S. RAINEY, MARGARET SANTULLI, AND THOROUGHBRED RETIREMENT FOUNDATION, INC., Defendants.	Index No. 401004-12 Assigned to: **VERIFIED COMPLAINT**

Plaintiffs, the People of the State of New York, by their attorney, ERIC T. SCHNEIDERMAN, Attorney General of the State of New York ("Attorney General"), allege on information and belief for their Verified Complaint the following against defendants John C. Moore, Robert Hinkle, Michael Lakow, Diana Pikulski, Hayward R. Pressman, Leslie Priggen, John S. Rainey, Margaret Santulli (collectively, "Individual Defendants") and Thoroughbred Retirement Foundation, Inc. ("TRF"):

NATURE OF THE CASE

1. The Attorney General brings this action against current and former directors of TRF, a New York not-for-profit corporation, for failing to properly oversee and manage the organization's operations and finances in light of TRF's unique responsibility for the welfare of more than 1,100 retired Thoroughbred race horses. By accepting more Thoroughbreds than TRF could afford to support and failing to provide adequate funding to its boarding facilities, TRF's

directors drove the organization into insolvency and caused the neglect, suffering, and even death, of horses in its herd. Over the past year, the board has engaged in a series of financially irresponsible transactions, borrowing to pay off existing debt and invading TRF's restricted endowment fund, that have damaged further TRF's ability to fulfill its charitable purpose of protecting Thoroughbreds from neglect and mistreatment.

2. The current crisis is the product of years of mismanagement of TRF by its longtime Executive Director and current board member and Director of External Affairs, Diana Pikulski, and the reckless failure of TRF's board, now under the direction of chairman John C. Moore, to ensure that TRF maintain a herd no larger than it can support. TRF has had negative cash flow in each year since 2005, operates at a substantial deficit, and is chronically late in its payments to the farms, veterinarians and other providers that take care of its horses. Yet between 2006 and 2010, TRF's leadership accepted over 500 new Thoroughbreds into the herd, without properly considering the organization's ability to pay for the care of these horses for the remainder of their lives and despite repeated warnings that TRF could not afford to take on any more horses.

3. TRF's board has endangered the herd by failing to spend what the Thoroughbreds in its care need for their proper support. The board pays the independent farms that board TRF horses on average $3 per day per horse, an amount that is less than half of the lowest average daily cost reported by any other horse rescue facility in the December 2011 report of the New York State Task Force on Retired Racehorses.

4. The TRF board's inadequate spending on the horses, together with its failure to provide proper supervision of the herd and of its boarding facilities, has resulted in severe neglect and inadequate care. The number of deaths in the herd spiked after 2006, and nearly 100

TRF Thoroughbreds died in 2010 alone. Many TRF horses do not receive adequate feed to supplement pasture grazing, particularly in the winter months, and much of the herd does not receive required maintenance care, such as tooth filing and hoof trimming, when needed. Horses have been deprived of proper treatment for injuries and medical conditions and turned out without adequate shelter. At some facilities, TRF horses have suffered severe malnourishment, prolonged and unnecessary pain, and death from starvation and exposure.

5. After revelations of neglect at TRF facilities surfaced in the national press in March 2011, the TRF board embarked on a series of irresponsible financial transactions that protected the interests of individual directors who had loaned money to TRF but encumbered its largest asset, a $7 million restricted endowment fund from the estate of Paul Mellon dedicated to the support of the horses.

6. In April 2011, the TRF board obtained a $1 million line of credit from a commercial bank affiliated with its then treasurer, John S. Rainey. The board then used a portion of the proceeds to repay more than $200,000 in outstanding personal loans to TRF from Mr. Rainey and Mr. Moore. By pledging to the lender all of the income on TRF's endowment fund, and seeking to give the bank the right to veto any material withdrawals from the fund, the board put at risk TRF's only stable source of revenue for the support of the horses and potentially cast away its ability to draw down the endowment fund further, with donor or court authorization, if necessary to safeguard the horses. Six months later, having exhausted the proceeds of the line of credit, the board invaded TRF's endowment without authorization and spent $200,000 in excess of the permitted 5 percent annual expenditure, in clear violation of the fund's restrictions.

7. The board's actions have burdened TRF with growing expenses and debt it cannot repay except by further depriving the herd of necessary support. In early 2012, TRF announced

a plan to transfer up to 600 horses to a ranch in Colorado, where the board plans to spend *even less* on the care of the herd on a per-horse basis than it does now. The board's recent major fundraising has been limited to the expansion of TRF's capacity at one facility in New York, while most of its other facilities remain underfunded.

8. TRF is a dysfunctional organization run by a seven-member board composed mainly of directors who have held their positions for five or more years and current and former TRF employees. More than 25 directors have left the TRF board since 2006, and the organization has had four different chief executives in the last three years.

9. By shortchanging the horses instead of finding responsible ways to shrink its herd, the TRF board has demonstrated its unwillingness or inability to fulfill the special responsibilities required of fiduciaries into whose hands the lives of animals have been entrusted.

10. In the course of the Attorney General's investigation, the current board sought to conceal TRF's true financial condition and fundraising prospects, by submitting padded interim financial statements and inflated projections of donor contributions.

11. The Attorney General brings this action against the Individual Defendants for violating the laws governing not-for-profit corporations by failing to discharge properly their duties as directors and officers of TRF. Among other things, the Individual Defendants (i) accepted too many horses into the TRF herd, when they knew the organization could not afford to support the horses already in its care; (ii) failed to provide sufficient funds to TRF's boarding facilities and to ensure that the horses receive the appropriate level of care and do not suffer neglect; (iii) entered into a commercial financing agreement that benefited individual directors but left TRF deeper in debt and encumbered its restricted endowment fund; and (iv) invaded the corpus of TRF's endowment fund in violation of its agreement with its donors. The Attorney

General brings this action against TRF for prospective relief necessary to its proper administration, including a moratorium on the acceptance of new horses into TRF's herd.

12. The Attorney General seeks a judgment, among other things: (i) removing TRF's current directors for cause and permanently barring the Individual Defendants from reelection to the board; (ii) requiring the Individual Defendants to account for violating their fiduciary and statutory duties by causing the neglect of TRF horses and engaging in financial transactions that benefited individual directors and violated the restrictions on TRF's endowment; (iii) enjoining TRF and its directors and officers from accepting additional horses into its herd without the Court's approval; (iv) enjoining TRF and its directors and officers from invading or otherwise misusing the endowment fund; and (v) appointing a temporary receiver to administer TRF's assets, pending the reconstitution of its board of directors.

JURISDICTION AND VENUE

13. The Attorney General is charged with overseeing the conduct of not-for-profit corporations and ensuring that charitable assets are put to appropriate use. As the primary regulator of charitable organizations in the State of New York, the Attorney General brings this action on behalf of the People of the State of New York under the Not-for-Profit Corporation Law ("N-PCL"), the Estates Powers and Trusts Law ("EPTL"), and as *parens patriae*.

14. Under Sections 112(a)(4) and 706(d) of the N-PCL, the Attorney General is authorized to seek the removal of directors for cause, including without limitation for violations of their fiduciary and statutory duties in the administration of charitable assets, and the barring of their reelection for a period fixed by the Court.

15. Under Section 720 of the N-PCL, the Attorney General may bring an action to compel one or more directors or officers to account for the neglect of, failure to perform, or other

violation of his or her fiduciary and statutory duties in the management and disposition of corporate assets committed to his or her charge, including without limitation: (i) the duty under Section 717 of the N-PCL to discharge his or her duties as a director or officer in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and with undivided loyalty to the corporation; (ii) the duty under Section 513(b) of the N-PCL to apply assets received for specific purposes to the purposes specified in the gift instrument and to the payment of the reasonable and proper expenses of administration of such assets; and (iii) the duty under Section 553 of the N-PCL to abide by any limitations specified in the gift instrument on the institution's authority to appropriate assets in an endowment fund for expenditure, such as a specific spending level, rate or amount.

16. Under Sections 1202(a)(3) and 1203 of the N-PCL, the Court may appoint a temporary receiver to administer the assets of a not-for-profit corporation in an action by the Attorney General under Section 112(a)(4) to remove directors for cause.

17. Under Section 8.1-4(m) of the EPTL, the Attorney General may institute appropriate proceedings to secure the proper administration of a not-for-profit corporation, including without limitation by seeking the removal of directors.

18. The Attorney General has common law *parens patriae* authority to conserve charitable property.

19. Venue is proper in this county under Section 503(a) of the Civil Practice Laws and Rules ("CPLR") because the Attorney General maintains offices in New York County.

PARTIES

20. The plaintiffs are the People of the State of New York, represented by their chief legal officer, Eric T. Schneiderman, Attorney General of the State of New York. The Attorney General maintains offices, among other locations throughout the State of New York, at 120 Broadway, New York, New York 10271.

21. Defendants John C. Moore, Robert Hinkle, Michael Lakow, Diana Pikulski, Hayward R. Pressman, Leslie Priggen, and Margaret (Peggy) Santulli are the current members of the board of directors of TRF.

22. Mr. Moore, the current chairman, joined the TRF board in 2006. Ms. Priggen and Ms. Santulli have been directors of TRF since at least 2002. Mr. Pressman joined the board in 2010. John S. Rainey joined the TRF board in 2006 and resigned from the board in or about December 2011.

23. Mr. Lakow and Ms. Pikulski are the senior officers of TRF, and Mr. Hinkle is a former senior officer. In or about 1997, Ms. Pikulski became Executive Director of TRF, a position she held until a staff restructuring in July 2010, when she took the title Director of External Affairs. Ms. Pikulski was succeeded by Larry Taylor, whom the TRF board appointed chief executive officer ("CEO"). The board dismissed Mr. Taylor in February 2011. Mr. Hinkle became CEO in May 2011 and was succeeded in turn by Mr. Lakow in December 2011.

24. Ms. Pikulski was a director of TRF from 2007 to 2010 and rejoined the board in 2012. Mr. Hinkle and Mr. Lakow each joined the TRF board when he was appointed CEO.

25. TRF is a Type B New York not-for-profit corporation with its headquarters at 178 Elm Street, Saratoga Springs, New York 12866. TRF is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

FACTS

I. Background

26. New York has a long and proud tradition of breeding and racing horses, dating back to the colonial era. Today, Thoroughbred racing is a billion-dollar industry that employs thousands of New Yorkers at equestrian facilities and tracks across the state.

27. New York is a national leader also in the promotion of animal welfare. In 1829, New York was among the first states in the country to enact legislation prohibiting cruelty to animals. The neglect of horses and other animals, including by failing to provide food, water, medical care and other necessary sustenance, is against the public policy of the State of New York.

28. In recent decades, the racing industry has struggled to ensure that Thoroughbreds receive proper care once their racing days are over. Although the average lifespan of a horse is 25 to 30 years, most Thoroughbreds "retire" from racing when they are only six or seven years old. The cost of providing aftercare to these horses is prohibitive for many owners. Thoroughbreds often suffer injuries on the tracks that impair their health later in life, and are not accustomed to living in herd conditions. Unlike draft horses, Thoroughbreds are bred for speed and are ill-suited for heavy work. Former race horses typically are not suitable for other uses without rehabilitation and training.

29. In 1982, TRF incorporated as a New York not-for-profit corporation for the purposes of preventing cruelty to animals and providing "retirement" homes for Thoroughbred race horses. TRF was "organized exclusively for the following purposes: for the prevention of cruelty to animals," according to its Certificate of Incorporation, which states:

> The purposes for which the corporation is to be formed are to provide a retirement home or homes for thoroughbred race horses with a racing record which because of age, disability or for other reasons are no longer suitable for racing and the owners of which are desirous of retiring them and in furtherance of these objects to solicit and to acquire property for corporate purposes by grant, gift, purchase, devise or bequest and to hold and to dispose of the same subject to such limitations as are prescribed by statute.

TRF Certificate of Incorporation ¶ 2.

30. TRF boards its horses at more than 25 facilities in 13 states, including New York, Virginia, South Carolina, Kentucky and Oklahoma. There are three types of TRF facilities:

a. *Satellite farms*. About 70 percent of the TRF herd resides at private farms, many sole proprietor or family-owned, which TRF calls "satellite farms." These farms act as independent contractors for TRF.

b. *Correctional Facilities*. TRF boards approximately 25 percent of the herd at eight correctional facilities, where inmates participate in a vocational training program in equine care and stable management.

c. *Directly-Operated Facilities*. The remaining TRF horses reside at a farm facility directly operated by TRF in Montpelier, Virginia, and the Maker's Mark Secretariat Center ("MMSC") in Kentucky, which are intended to be centers of its program to retrain and rehabilitate Thoroughbreds for adoption. In or about April 2012, the MMSC began operating as a separate organization.

31. TRF also boards horses at "foster care" farms, which, unlike satellite farms, agree to provide care, feeding and supervision to the horses as an in-kind donation to TRF. TRF has approximately 50 horses in foster care.

32. TRF boards approximately 100 horses at two locations in New York: the Wallkill Correctional Facility, in Ulster County, and Applebee's Farm, a satellite farm in Steuben County.

33. TRF's major asset is a restricted endowment fund created by two separate bequests in 2001 from the estate of the philanthropist Paul Mellon, a leading owner and breeder of Thoroughbreds, totaling $7 million (the "Endowment Fund"). The executors of the Mellon estate, Frederick A. Terry, Jr. and Beverly Carter (the "Executors"), donated the first bequest of $5 million to TRF under an Endowment Agreement, dated January 19, 2001, between the Executors and TRF (the "Endowment Agreement"). It includes the following restrictions:

> The [bequest] shall be invested and maintained by the Foundation in perpetuity as a separate segregated endowment fund (the "<u>Endowment Fund</u>"). The Foundation may expend annually an amount not exceeding five percent of the fair market value of the Endowment Fund, as determined annually, solely for the care and maintenance of retired thoroughbred racing horses.

Endowment Agreement ¶ 1. In or about November 2001, the Executors donated the second bequest of $2 million to TRF, expressly subject to the same restrictions set forth in the Endowment Agreement.

II. TRF's Board Has Accepted More Horses Into Its Herd Than It Can Support

34. TRF's board has accepted more Thoroughbreds into the herd than the organization can afford to support, driving TRF into insolvency and imperiling the health and safety of its horses.

35. Although TRF's financial condition may have begun to deteriorate earlier, it declined sharply after it accepted over 500 new horses into the herd in 2004 and 2005 alone. TRF's direct horse care expenses, including boarding, feed, and veterinary and other services, more than doubled between 2003 ($766,774) and 2005 ($1,651,085), when it sustained an operating loss of over $650,000. TRF has had negative cash flow in each year since 2005 and a six- or seven-figure operating loss in all but two of those years. TRF ended 2011 with an operating deficit of approximately $500,000.

36. TRF has been insolvent for years. The organization has been unable to pay its debts as they become due, including funds borrowed from the Endowment Fund and accounts payable to its boarding facilities and horse care providers:

a. In 2007, with the consent of the Executors, TRF's board borrowed $500,000 from the Endowment Fund, to be repaid in five $100,000 installments at the end of each year from 2009 to 2013. TRF was unable to make the payments due in December 2009 and December 2010 on time.

b. TRF regularly is late in making payments to the satellite farms, averaging two to four months in arrears since late 2009, and was at one time as much as six to eight months behind.

c. TRF on average is 60 to 90 days late in making payments to veterinarians, feed stores and other vendors, and on occasion as much as 120 to 150 days late.

37. For years, TRF's leadership has accepted additional horses into the herd without sufficient consideration of TRF's ability to provide an adequate level of care to these horses for the rest of their lives, and despite clear warnings that, since at least 2005 or 2006, TRF could no longer afford to accept new horses into its herd. For example, according to the minutes of TRF board meetings:

a. In August 2005, in discussing opposition among TRF directors to a proposal to limit intake to "adoptable or sponsored horses," "It was, however, clearly recognized by the board that the perilous position of the TRF's finances did not allow us to have an 'open door' policy on intake without threatening our ability to meet our financial obligations."

b. A little over six months later, in April 2006, then president Terence Collier stated, "TRF needs to change its course. For three years, we have grown our programs and increased the number of horses but in spite of efforts by Diana Pikulski and the board, fundraising has remained basically static. This has placed us at a 'precipice' and without drastic and major changes in fundraising, we are headed towards imminent financial crisis."

c. In August 2006, then president Johnathan Miller "remarked that the TRF's explosive growth has created a precarious financial situation calling for enhanced fund-raising and rigorous cost controls." At the same meeting, "Diana Pikulski mentioned that 'we haven't increased our horse population and we don't plan on doing that.'"

d. In November 2006, after a director "inquired about an intake moratorium," Mr. Miller relayed another director's request "that because of the pending anti-slaughter legislation, the TRF not publicize that it cannot accept horses at this time."

e. In August 2009, "John Rainey, based on the financial status of TRF, stated that TRF cannot continue to support as many horses as it does."

f. At a February 2010 board retreat attended by Mr. Moore, Ms. Pikulski, Ms. Priggen, Mr. Rainey and other directors, the following issue was identified: "Herd size too large to afford to care for." The corresponding action was suggested: "Reduce herd size based on available funds ÷ [*i.e.*, divided by] cost per head = number of horses TRF can afford."

38. Despite TRF's ongoing financial difficulties, the directors and officers of TRF accepted large numbers of new horses into the TRF herd throughout this period. By its own count, TRF accepted over 500 additional horses into the herd between 2006 and 2010:

2006	134
2007	68
2008	131
2009	130
2010	51
Total	514

39. In February 2011, the board at last instituted a complete moratorium on the acceptance of new Thoroughbreds into the TRF herd, which slowed but did not stop the intake of new horses. Then CEO Larry Taylor advised the board, "***We must stop taking in horses until funds are available to sustain the herd.***" The board adopted the following resolution:

> RESOLVED, that effective February 1, 2011 the TRF policy will be a Zero Tolerance for the in-take of additions to the TRF Herd, no matter how, for what purpose, and whether or not accompanied by money in any amount or by promises for future support in any amount and for any period;
>
> RESOLVED FURTHER, that there are and will be no exceptions to this Zero Tolerance Policy granted by anyone to anyone at any time under any circumstances;
>
> RESOLVED FURTHER that this Resolution may be revoked or amended by specific reference thereto only by a subsequent resolution or resolutions duly adopted by the TRF Board of Directors.

40. Although the moratorium resolution has not been duly revoked or amended, TRF ultimately accepted 23 new Thoroughbreds into the herd in 2011, including two horses belonging to Mr. Moore and his wife Susan Moore (Son of a Gun and Iron Countess) and one horse belonging to Mr. Pressman (Mighty Tuff). Mr. Moore also placed a horse he owned (Tropical Punch) in the TRF herd in 2012. TRF accepted these new horses without securing funding commitments sufficient to support their care for the remainder of their lives, thereby further

diminishing the resources available to its existing herd.

41. TRF cannot afford to care for its oversized herd and cannot take on any more horses without further undermining its ability to fulfill its charitable mission of caring for retired Thoroughbreds.

III. TRF's Board Has Failed To Spend Adequate Amounts on Its Herd and To Supervise the Care that Its Horses Receive

42. The TRF board has deprived the Thoroughbreds entrusted to its care of proper support by failing to provide sufficient funds for the feeding and care of the horses to TRF's boarding facilities and failing to supervise the care its horses receive from their caretakers.

43. TRF's financial arrangements for the payment of horse care expenses vary according to the type of boarding facility. Under its contracts with the satellite farms, TRF pays the farm a fixed daily fee per horse, called the "per diem," for care, feeding and supervision. TRF is responsible for the cost of farrier services, medication and veterinary care provided to horses at its satellite farms. At one satellite farm, Shaffer Place Farm in Virginia, TRF also employs the farm manager directly. Under its contracts with correctional facilities, TRF generally is responsible for all of the expenses that the facility incurs to feed and provide farrier services, medication and veterinary services to the horses. TRF is responsible also for a director's salary and facility upkeep costs at several correctional facilities. At its directly-operated location, TRF employs staff and pays horse care expenses directly. Under TRF's "foster care" contracts, the farm pays for the expenses associated with the care, feeding and supervision of the horses as an in-kind donation, but TRF is responsible for the cost of farrier services, medication and veterinary care.

44. In recent years, having failed to achieve fundraising results sufficient to keep up with the growing expenses of its oversized herd, the TRF board resorted to cost-cutting at the

expense of the health and well-being of its horses. At an October 2009 meeting, the TRF board decided to cap the per diems paid to its satellite farms at a uniform $3 rate, effective January 1, 2010. Mr. Moore, Ms. Pikulski, Ms. Priggen, Mr. Rainey and the other directors present all voted in favor of the cap. The board then sought to negotiate reduced per diems with several long-time TRF satellite farms and transferred horses from facilities that would not submit to the reduced $3 rate to cheaper locations.

45. When it implemented the uniform $3 per diem, the TRF board was aware of the risks that this spending level posed to its Thoroughbreds. According to the minutes of the board's December 2009 meeting, where the directors discussed resistance by farm managers to the $3 per diem:

> Diana [Pikulski] pointed out, as she previously had, that it is hard to ask the farms to accept the $3.00 per day, since at the time the satellite farm program started 13 years ago, the TRF was willing to pay $6.00 per day. Leslie [Priggen] expressed her concern that the horses be kept well and healthy at $3.00 per day and felt it most important that the TRF oversee these farms more closely then [sic] they had in the past. Johnathan [Miller] agreed, however, Johnathan expressed the reality that steps have to be taken to protect all 1,300 horses in the care of TRF. Leslie again felt that these horses should be properly cared for and not drop any weight, which will be a source of potential problem [sic] for TRF.

46. The $3-a-day TRF per diem is well below industry standards and the average costs reported by other horse rescue facilities. In 2008, the American Veterinary Medical Association ("AVMA") estimated the average cost to "provide basic care for a single horse," excluding veterinary and farrier care, was $1,825 per year, or $5 per day. The AVMA cautioned, "This figure does not account for the recent and dramatic increases in the cost of hay—it is likely that the current cost of care is much higher." The cost of hay and other feed has continued to rise since 2008. The December 2011 report of the New York State Task Force on Retired Racehorses cited the AVMA estimate from 2008 and noted that a national rescue organization today "factors $10/day ($3,650 annually) as a baseline cost for feed, hay and stall (if needed) for

a retired racehorse awaiting adoption." In the report, farms in New York, California and Pennsylvania reported costs per retired horse ranging from $6.85 to $9.86 per day ($2,500 to $3,600 annually), excluding veterinary and farrier expenses, all more than *double or triple* the standard TRF per diem. Ms. Pikulski was a member of the Task Force.

47. TRF acknowledges publicly that the cost of providing care to a retired race horse is over $5 per day. TRF offers donors the opportunity to take part in its "full sponsorship" program by donating $5 per day towards the support of a particular Thoroughbred, a sum that, according to the TRF website, "pays for almost all of the expenses for a horse of your choosing." In the Task Force report, TRF estimated that rehabilitation and retraining for adoption adds an additional $5 per day in costs.

48. TRF's directors have received repeated warnings that its per diems are inadequate to cover the cost of providing proper care to retired Thoroughbred race horses. As early as August 2006, board meeting minutes reflect that a former TRF director cautioned that "$5-$6/day is a more realistic sponsorship level than the $3/day that is widely publicized in TRF literature and on the website." In the past year, two donors funding the expansion of TRF's Wallkill facility along with the Harriet E. Pfleger Foundation, the New York Thoroughbred Horsemen's Association ("NYTHA") and the New York Racing Association, Inc. ("NYRA"), have objected to the $3 per diem cap, according to internal TRF e-mails. In June 2011, Mr. Moore wrote to Ms. Pikulski, Ms. Priggen and others at TRF:

> As I mentioned yesterday, they are ADAMANT about this at NYTHA and NYRA we will not get one nickel of the $185K, which impacts the $225K Phleger [sic] grant, if there is even a hint of any $3 per diem policy in effect. We plan to represent to the NY AG that the policy was dropped in early April.

In addition, the satellite farm operators themselves have complained to TRF about the inadequacy of the per diem. According to the minutes of the August 17, 2011 meeting of the

Herd Intake and Management Committee ("Herd Committee"), which includes TRF board members and staff, "all farms have mentioned to Sara [Davenport, a TRF employee], that the winter months are difficult at $3 per day."

49. Although the board nominally discontinued the $3 cap in 2011, TRF continues to pay a standard $3 per diem to its satellite farms, with some receiving as little as $2.50.

50. In addition to maintaining spending at inadequate levels, TRF's board has failed to provide effective monitoring and oversight of the many facilities across the country that board its horses, to ensure that the Thoroughbreds receive proper care and do not suffer neglect.

51. TRF does not provide adequate oversight of the care its horses receive at its satellite farms and other boarding facilities. TRF has no training program for the caretakers that manage these facilities and provides limited supervision of the herd's care. Since at least 2006, TRF has failed to conduct sufficiently regular inspections of its facilities. Nor has TRF routinely checked on the horses it has placed at independent facilities under its "foster care" program, even though those horses continue to be owned by TRF. Only one member of TRF's seven-person central staff, the Herd Manager, is assigned full-time to managing the herd.

52. The TRF board has failed to ensure that the organization and its boarding facilities maintain accurate and sufficient records regarding the condition, location and identity of the horses in its herd. Many TRF facilities do not keep complete records of the medical treatments and routine care provided to the Thoroughbreds. According to the minutes of a January 2012 Herd Committee meeting, TRF employees continue to "discuss tracking current condition, trims, vaccines, worming, dental, etc. in the herd database, as no progress has been made in that area." Horses that are transported between TRF facilities frequently are not accompanied by any records, in violation of industry standards. TRF's intake database includes

hundreds of horses with no recorded intake date.

53. The oldest animal welfare organization in the United States has refused to support TRF based on concerns regarding its oversight of the care its horses receive. The New York-based American Society for the Prevention of Cruelty to Animals ("ASPCA") made a $175,000 grant to TRF in February 2010, but in March 2011 refused to consider TRF for additional funding, after TRF did not meet the ASPCA's requests to produce veterinary inspection reports and obtain accreditation from the Global Federation of Animal Sanctuaries. Jacque Schultz, senior director of the ASPCA Equine Fund, stated publicly, "We're very disappointed in T.R.F.'s animal care oversight and that they were not adhering to operational best practices."

IV. TRF's Board Has Endangered and Caused the Neglect of its Horses

54. Through its inadequate spending on the herd and its failure to supervise its boarding facilities, the TRF board has endangered and caused the neglect of the retired Thoroughbred race horses entrusted to its care. TRF horses have not been fed adequately and have been deprived of veterinary attention and necessary maintenance care. As a result, TRF horses have been placed at risk of illness and injury and have suffered malnourishment, untreated sores and injuries, and, in some instances, death from starvation and exposure.

55. TRF facilities have been unable to purchase enough hay, grain and other feed to supplement grazing, particularly in the winter months when pasture may be insufficient. For many years, TRF's contracts required the satellite farms to maintain the Thoroughbreds at a score between 5 (Moderate) and 7 (Fleshy) on the Henneke scale, a standardized system for assessing horse body condition. In her March 2011 report to the TRF board, an equine veterinarian hired to inspect the herd, Stacey Huntington, D.V.M., concluded that hundreds of TRF horses had Henneke scores below the range mandated by TRF in its contracts. Over 10 percent of the horses examined had a score below 4 (Moderately Thin).

56. Many TRF facilities have not provided basic maintenance care to the herd as required. Veterinarians, farriers and other horse care providers have refused to visit or supply TRF facilities because of payment delays and defaults. In her inspections, Dr. Huntington found that 98 percent of the TRF herd had not received one or more types of appropriate maintenance care, such as dental care, vaccinations, de-worming and farrier care. Dental care for Thoroughbreds includes the periodic filing down of over-sharp teeth, a procedure known as "floating," which prevents oral diseases and difficulty feeding. Farrier care include shoeing and the regular trimming of horses' hooves, which is needed to prevent pain and infections from split hooves, injuries and lameness.

57. Years of inadequate spending and supervision have taken their toll on the TRF herd. The number of deaths of TRF Thoroughbreds has risen sharply in the past five years. Between 2004 and 2006, there were only 45 deaths in the herd, by TRF's count. Between 2007 and 2011, there were over 315 deaths. Nearly 100 TRF horses died in 2010 alone.

58. Dr. Huntington's inspections in January and February 2011 revealed egregious neglect at TRF facilities in Oklahoma, three of which reported that TRF was delinquent in its per diem payments by as much as eight months. For example:

a. The Oklahoma farms had 18 severely underweight TRF horses with a body condition score of 3 or less.

b. Only 47 of 63 TRF horses expected to be found at the 4-H Cattle Company, where the herd was kept outside with no access to shelter, were recovered by TRF's inspectors. The owner of 4-H, Janice Hudgins, informed a TRF staff member (who subsequently informed board members) that she believed some of the TRF horses had died during a recent blizzard.

c. None of the approximately 171 TRF horses at the Windmill, Rocking T and Rafter G farms had been vaccinated in over two years.

d. The Rafter G farm kept no records at all on the horses in its care.

After Dr. Huntington informed TRF that she intended to report the neglect at 4-H to an Oklahoma sheriff's office, one TRF director wrote to another, "TRF is going to be partially at fault also due to our lack of mgmt and fiscal responsibility."

59. In March 2011, Dr. Huntington found neglected and starving horses at Deer Valley Farm, a TRF satellite farm in Kentucky owned and operated by Sam Detweiler, including three horses with a body condition score at or below 2.5. Dr. Huntington noted in her report that its owner, who raised Standardbreds, was unfamiliar with the nutritional needs of Thoroughbreds and had told her that he could not afford grain for the horses on the TRF per diem. At the time of her inspection, TRF was paying the farm a $2.50 per diem. Dr. Huntington recommended closing the facility in her report to the TRF board and filed a complaint with the Kentucky Department of Agriculture. Shortly after her inspection, three horses that Dr. Huntington had identified as dangerously underweight died.

60. After receiving "horrific pictures" of TRF horses at the Detweiler farm in early March 2011, Marlene Murray, president of The R.A.C.E. Fund, Inc., a Pennsylvania horse rescue organization that had placed horses in the TRF herd and made donations to support their care, wrote to Ms. Pikulski:

> Do you not realize the magnitude of abuse and neglect? There is absolutely no excuse for our horses or anyone else's horses to be in this condition. This obviously did not happen overnight and has been ongoing. Why didn't you or the TRF Board of Directors waive a white flag and send out an SOS signal instead of just obviously letting horses starve and die?

Ms. Pikulski responded, "Absolutely, they realize the magnitude and they have taken the right

steps to get the the [sic] horses back to where they need to be and make sure that it never happens again." A few months later, when Ms. Murray pressed for updated information concerning the former R.A.C.E. Fund horses in the TRF herd, TRF's chairman, Mr. Moore, wrote to a staff member who had been fielding her inquiries, "You are a saint and this lady is a waste of time."

61. Following articles that appeared in the *New York Times* in March 2011 concerning the mismanagement of TRF and the poor condition of the herd, the TRF board fired Dr. Huntington before she could complete her inspections. The board, facing public criticism, transferred horses from the most problematic farms to other facilities in an attempt to stabilize the condition of the herd.

62. A year after Dr. Huntington's inspections, the TRF board has continued to foster the neglect of its horses by maintaining spending at inadequate levels and failing to supervise the care provided to the horses at TRF boarding facilities. The board's ongoing failure to provide an appropriate level of care to TRF horses is illustrated, to take but two examples, by the recent problems at Wallkill prison in New York and the Detweiler farm, where TRF continued to board horses until March 2012.

A. Wallkill

63. At Wallkill, inadequate funding, the failure to pay vendors, and poor record-keeping caused TRF horses to become malnourished and to go months, and in one case years, without required maintenance care. For example:

a. For a three-year period, *none* of the Thoroughbreds at Wallkill received dental care, in part because TRF's failure to make timely payments made it difficult to find an equine dentist willing to visit the facility. Although a veterinarian

determined in April 2011 that approximately 20 of the Wallkill horses urgently needed teeth floats, none of these horses underwent the procedure until December 2011, when the first five were treated.

b. In December 2011, TRF transferred six severely underweight horses from Wallkill to Shaffer Place Farm, a TRF satellite farm in Virginia, where they arrived unaccompanied by identification files, medical histories, or records of any kind. One horse in a weakened condition had open wounds on its hindquarters.

c. In or about January 2012, a TRF horse suffered for five weeks with a six-inch-long barbed stick stuck in his nasal cavity, without receiving adequate veterinary attention. According to the minutes of a Herd Committee meeting, the horse received "inferior medication and waited 5 weeks before being taken to the clinic, as his health did not improve."

64. The continuing inadequacy of the care provided to TRF horses at Wallkill was confirmed by an inspection conducted at the request of the Attorney General on February 2, 2012, by Investigator David R. Fix of the Ulster County Society for the Prevention of Cruelty to Animals. Investigator Fix identified the following concerns:

a. Approximately 65 percent of the herd was in need of farrier services and teeth floating. The TRF facility manager concurred with this conclusion.

b. Five horses, roughly 10 percent of the herd, had body condition scores at or below 4 on the Henneke scale.

c. One horse had an open wound on its leg that had not been cleaned or medicated.

d. The facility does not maintain accurate records of medications administered to the herd. The facility manager described himself as a "terrible record keeper."

B. Detweiler

65. Following Dr. Huntington's inspection in March 2011, when she recommended closing the facility, the TRF board failed to take sufficient action to protect the horses at the Detweiler farm. On June 6, 2011, TRF transferred six of the horses to the Shaffer Place Farm in Virginia, where they arrived with their ribs showing and teeth and hooves in poor condition. A few weeks later, the Herd Committee discussed the "urgency" of removing horses from the Detweiler farm, but no other horses were removed in 2011.

66. Only in February and March 2012 did the TRF board remove all of its horses from the Detweiler farm. The first horses removed arrived at Shaffer Place Farm, a seven-hour trailer ride away, with ribs protruding, patches of hair missing, severely overgrown hooves, and open and infected sores. One horse fell during unloading because it would not put weight on a foot with an untreated abscess. In March 2012, local veterinarians determined that all but one of the first 19 horses removed from the Detweiler farm had body condition scores of 4 or less, and recommended that two of the horses be euthanized, including a severely lame horse that was about seven years old.

V. The Board Has Further Compromised TRF's Ability to Support the Herd By Borrowing Against and Invading its Endowment

67. Since the public revelations in early 2011 concerning the poor condition of the herd, the TRF board has compromised further its ability to fulfill its charitable mission of properly caring for retired Thoroughbred race horses by borrowing against and invading the Endowment Fund. By pledging the Endowment Fund to a commercial lender affiliated with a TRF director, and using borrowed funds to repay personal loans from directors, the TRF board placed its members' interests ahead of the horses' needs and jeopardized the principal recurring source of revenue for the support of the TRF herd. The board also violated the spending

restrictions in the Endowment Agreement by invading the corpus of the Endowment Fund without donor or court authorization.

68. Already insolvent, TRF entered 2011 with nearly $1 million in outstanding debt, and no viable plan for repaying it. In addition to the $500,000 that the board had borrowed from the Endowment Fund in 2007, TRF had several hundred thousand dollars in overdue accounts payable and outstanding director loans, including $40,000 borrowed from Mr. Moore and his wife in 2008 and $165,000 borrowed from Mr. Rainey in November 2010. Mr. Rainey's loan was initially secured by the 2011 annual distribution from the Endowment Fund, but in February 2011, after the Executors objected, the terms were revised to provide that Mr. Rainey could be repaid by TRF only with non-Mellon funds. In his February 2011 presentation to the board (the same meeting at which the directors decided to terminate his employment), then CEO Larry Taylor advised the TRF board:

- "$450,000 over expenditures is needed to pay AP's [accounts payable] carried over from 2010 and to pay back directed [sic] loans[.]"
- "We also need to address Mellon Loans of $500,000 and have a plan to pay back those loans[.]"

69. The plan ultimately developed by the TRF board to address the organization's mounting overdue debts was to borrow $1 million against the Endowment Fund. In April 2011, Mr. Rainey arranged for TRF to obtain a $1 million line of credit from a Georgia bank, National Bank of South Carolina ("NBSC"), on whose board Mr. Rainey serves. Two of TRF's current directors, Mr. Moore and Mr. Pressman, voted to approve the line of credit. Although he abstained from the vote, Mr. Rainey executed the promissory note and security agreement for the line of credit on behalf of TRF. In the following months, the TRF board used the proceeds of the line of credit in part to repay Mr. Rainey's and Mr. Moore's personal loans to TRF, and to repay the $200,000 in repayment installments overdue to the Endowment Fund.

70. In addition to driving TRF deeper into debt, the decision of the TRF board to enter into the NBSC line of credit jeopardized the organization's only stable source of revenue for the support of the herd and its ability to access the Endowment Fund if necessary to protect the horses. Under an Assignment, Security Agreement, and Pledge of Account Earnings, dated April 29, 2011 (the "Assignment"), TRF pledged all income on the Endowment Fund to NBSC and committed to make no material withdrawals from the fund without the consent of the bank. This provision, if enforced, would allow NBSC to bar TRF from drawing down the Endowment Fund, even if TRF obtained authorization from the Executors or a court.

71. In approving the line of credit, the TRF board improperly relied upon a legal opinion from the law firm Hunton & Williams LLP, dated April 12, 2011 (the "Opinion") that does not address either the legality of assigning *all* income on the Endowment Fund to NBSC, or granting a lender control over the corpus of a restricted endowment fund. Moreover, the Opinion does not consider New York law and noted the possibility that "some aspect of New York corporate law governing the Foundation compels a different result." The TRF board did not obtain a separate legal opinion concerning whether the Assignment complied with New York law.

72. Having exhausted the line of credit in less than six months, the TRF board next resorted to unauthorized invasions of the Endowment Fund, which it characterizes as "advances" against future-year expenditures from the fund. Between September and December 2011, the board spent $200,000 from the Endowment Fund over and above the permitted 5 percent annual expenditure for 2011. The TRF board did not obtain the approval of the Mellon Executors or a court for these breaches of the donor-imposed annual spending limit, as required by law.

73. By entering into the NBSC line of credit and invading its Endowment Fund, the board has mortgaged TRF's ability to support the herd in the future. TRF now has over $1.5 million in debt, including accounts payable, and no reasonable prospect of repaying it without further reductions in the already inadequate support provided to its horses.

VI. The Board Has Sought to Conceal TRF's Desperate Financial Condition and Has Failed to Develop a Herd Reduction Plan

74. The TRF board has proved unwilling or unable to develop a viable plan to reduce the size of the herd or otherwise place TRF on a sustainable footing, and instead has sought to conceal its true financial circumstances from the Attorney General by submitting documents that concealed TRF's 2011 midyear operating deficit and exaggerated its fundraising prospects.

75. In September 2011, TRF masked a year-to-date operating loss of about $230,000 by including certain contingent future donations, called "stallion seasons," in financial statements submitted to the Attorney General, a departure from TRF's regular accounting practices. TRF's finance staff and outside auditor ordinarily do not include stallion seasons in the organization's receivables because they are pledged donations contingent upon a successful birth: the fee for the stallion season (the right to breed a mare to a stallion in a given year, typically in the spring) is payable only when and if the mare gives birth and the foal stands and nurses, typically eleven months after breeding takes place. The TRF staff members who prepared the August 2011 interim financial statements for submission to the Attorney General, however, were directed to include $540,000 in stallion seasons "due" in 2012 and 2013 as current assets on the balance sheet and as sources of funds available in the 2011 budget. This alteration had the effect of converting a mid-year operating deficit of more than $200,000 into an apparent surplus of approximately $350,000.

76. Similarly, in November 2011, at the direction of TRF's chairman, Mr. Moore, TRF staff altered 2012 herd size projections prior to submission to the Attorney General, in order to exaggerate the organization's fundraising prospects. In the initial version of a Two Year Financial Plan for 2012 and 2013 ("Two Year Plan") prepared by TRF staff, it was estimated that in 2012 TRF would place 65 additional horses in foster care and obtain 65 new "virtual foster" placements, a new name for TRF's "full sponsorship" program (donor commitments to contribute $5 per day to support particular Thoroughbreds in the TRF herd). Over the staff's objections, Mr. Moore directed that both projections be more than doubled, to 150 horses each:

	As Prepared	As Submitted
New Adoptions	75	75
New Foster Placements	65	150
New "Virtual" Fosters Placements	65	150
Deaths	30	30
Total Projected Decrease in Herd Size in 2012	235	405

These changes falsely inflated the projected reduction in herd size during 2012 by 170 horses.

77. Contrary to the impression it tried to convey to the Attorney General, the TRF board has failed to develop any viable plan to reduce the TRF herd to a size that the organization can support. TRF is not on track to meet the original or inflated projections for actual and virtual foster care placements, which together accounted for nearly 75 percent of the projected decrease in herd size in the Two Year Plan. In its submission to the Attorney General, TRF projected that horses would be added to the virtual fostering program at a rate of around 12 horses per month in 2012. Between November 10, 2011, when it was announced, and January 31, 2012, only 4 TRF Thoroughbreds were added to the program. This brought the total number of "fully sponsored" TRF horses to less than 75. Moreover, placement of horses in foster care, real or virtual, while it may temporarily offset some horse care expenses, does not remove any horses from TRF's herd: TRF remains responsible for the expenses of fostered horses not covered by donations; foster

farms can return horses to TRF facilities; and neither TRF's foster farm contracts nor the virtual fostering program includes a commitment by the donor to support the horse for the remainder of its life.

78. Contributions to TRF continue to stagnate. In October 2011, in a TRF press release, Mr. Hinkle, then CEO, issued an "urgent plea" to the public concerning the "crisis" at TRF: "Hinkle said TRF needs both to increase donations and to reduce herd costs by immediately placing as many as 200 to 300 horses in Foster Care." Most of the recent major donations to TRF, however, are committed to the expansion of its troubled Wallkill facility, and its foster care placements remain well below 100 horses.

79. In January 2012, in yet another attempt to create the appearance that it has a workable strategy to solve the crisis caused by its own fiscal irresponsibility and oversight failures, the TRF board began publically promoting a plan to relocate a significant portion of its herd to a ranch in Walsenburg, Colorado. This plan, now in the process of being finalized, is not intended to improve the quality of care provided to the horses in TRF's herd, but instead to reduce further the already inadequate amounts per horse that TRF spends.

80. The TRF board has no real plan to extricate the organization and its horses from its present unsustainable course. Without the Court's intervention, the current TRF leadership will continue to fail to fulfill the organization's charitable mission of providing proper care to retired Thoroughbred race horses.

FIRST CAUSE OF ACTION
(Against the Individual Defendants)
NEW YORK NOT-FOR-PROFIT CORPORATION LAW § 706
REMOVAL OF DIRECTORS FOR CAUSE

81. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

82. Each current member of the TRF board is liable to be removed as a director of TRF for cause because the Individual Defendants (i) allowed horses to be accepted into the TRF herd, when they knew the organization could not afford to support the horses already in its care; (ii) failed to provide sufficient funds to TRF's boarding facilities and to ensure that the horses receive an appropriate level of care and do not suffer neglect; (iii) entered into a commercial financing agreement with NBSC that benefited individual directors but left TRF deeper in debt and with less access to its Endowment Fund; and (iv) misapplied the Endowment Fund contrary to the restrictions in the Endowment Agreement, including by invading the corpus of the fund and causing TRF to enter into the Assignment in connection with the NBSC line of credit.

83. Accordingly, each current member of the TRF board should be removed for cause as a director of TRF, and all Individual Defendants should be permanently barred for cause from re-election to the board under Section 706(d) of the N-PCL.

SECOND CAUSE OF ACTION
(Against the Individual Defendants)
NEW YORK NOT-FOR-PROFIT CORPORATION LAW §§ 717 AND 720
VIOLATION OF DUTY OF CARE

84. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

85. The Individual Defendants have failed to discharge their duties as directors of TRF in good faith and with the degree of care, skill, prudence, and diligence required of them,

and in particular their duty of care to TRF, in that, among other things, they (i) allowed horses to be accepted into the TRF herd, when they knew the organization could not afford to support the horses already in its care; (ii) failed to provide sufficient funds to TRF's boarding facilities and to ensure that the horses receive the appropriate level of care and do not suffer neglect; (iii) entered into a commercial financing agreement with NBSC that benefited individual directors but left TRF deeper in debt and with less access to its Endowment Fund; and (iv) misapplied the Endowment Fund contrary to the restrictions in the Endowment Agreement, including by invading the corpus of the fund and causing TRF to enter into the Assignment in connection with the NBSC line of credit. The Individual Defendants took these actions in conscious disregard of the risks they posed to TRF's horses and the organization's ability to fulfill its charitable purpose.

86. By engaging in the foregoing conduct, the Individual Defendants breached their duty of care to TRF in violation of Section 717 of the N-PCL.

87. Accordingly, the Individual Defendants are liable to account for their conduct in the neglect and violation of their duties in the management and disposition of corporate assets, under Section 720 of the N-PCL.

THIRD CAUSE OF ACTION
(Against Defendants Moore and Rainey)
NEW YORK NOT-FOR-PROFIT CORPORATION LAW §§ 717 AND 720
VIOLATION OF DUTY OF LOYALTY

88. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

89. Mr. Moore and Mr. Rainey failed to discharge their duties as directors of TRF in good faith and with the undivided loyalty required of them, in that, among other things, knowing TRF to be insolvent and unable to afford to support the horses in its care, they authorized and/or

facilitated TRF's entry into a commercial financing agreement with NBSC collateralized by security interests in the Endowment Fund, and then used the proceeds of the NBSC line of credit to repay over $200,000 in outstanding personal loans to TRF from Mr. Moore and his wife and Mr. Rainey.

90. By engaging in the foregoing conduct, Mr. Moore and Mr. Rainey have breached their duty of loyalty to TRF in violation of Section 717 of the N-PCL.

91. Accordingly, Mr. Moore and Mr. Rainey are liable to account for their conduct in the neglect and violation of their duties in the management and disposition of corporate assets, under Section 720 of the N-PCL.

FOURTH CAUSE OF ACTION
(Against All Defendants)
NEW YORK NOT-FOR-PROFIT CORPORATION LAW §§ 513, 553 AND 720
VIOLATION OF DUTIES IN THE ADMINISTRATION OF CHARITABLE ASSETS

92. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

93. The Endowment Agreement imposes the following restrictions on the use of the Endowment Fund: (a) the Endowment Fund must be maintained in perpetuity; (b) each year, TRF may expend no more than five percent of the fair market value of the Endowment Fund; and (c) TRF may expend funds from the Endowment Fund "solely for the care and maintenance of retired thoroughbred racing horses."

94. TRF's assignment to NBSC of a security interest in "the earnings, interest, and income earned upon, by and through the corpus" and its commitment to "make no unreplaced distributions or sales of Securities from the Account that will materially diminish the holdings or the value of the Account without the prior written consent of Lender [NBSC] in its sole discretion," Assignment ¶ 1, violate the restrictions in the Endowment Agreement.

95. By authorizing and/or facilitating TRF's entry into the NBSC line of credit and the Assignment in April 2011, Mr. Moore, Mr. Pressman and Mr. Rainey violated their duties under Section 513(b) of the N-PCL.

96. The TRF board's practice of invading the Endowment Fund by taking so-called "advances" on future-year distributions, which are expenditures from the fund in excess of the 5 percent annual expenditure permitted by the Endowment Agreement, without donor or court authorization, violates Section 553 of the N-PCL.

97. By authorizing or acquiescing in the expenditure from the Endowment Fund in 2011 of $200,000 in excess of TRF's permitted five-percent expenditure for that year, without donor or court authorization, the Individual Defendants violated their duty under Section 553.

98. Accordingly, the Individual Defendants are liable under Section 720 of the N-PCL to account for their conduct in the neglect and violation of their duties in the administration of charitable assets.

FIFTH CAUSE OF ACTION
(Against Defendants Moore, Hinkle, Lakow, Pikulski, Pressman, Priggen, Santulli & TRF)
NEW YORK ESTATES, POWERS AND TRUSTS LAW § 8.1-4
IMPROPER ADMINISTRATION OF NOT-FOR-PROFIT CORPORATION

99. The Attorney General repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

100. TRF and its current directors are subject to the Attorney General's supervision as trustees under Section 8-1.4 because, respectively, (i) TRF is a not-for-profit corporation organized under the laws of New York for charitable purposes and is holding and administering property for charitable purposes, and (ii) the current directors of TRF are individuals administering property for charitable purposes.

101. By their conduct described above, the Individual Defendants failed properly to

administer TRF.

102. Accordingly, in order to secure the proper administration of TRF, the Attorney General seeks the removal of the current directors of TRF as trustees, and to bar TRF and its directors from accepting additional horses into the TRF herd without court approval or violating the restrictions on the Endowment Fund in the Endowment Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that a judgment and order be issued:

(a) removing John C. Moore, Robert Hinkle, Michael Lakow, Diana Pikulski, Hayward R. Pressman, Leslie Priggen and Margaret Santulli as directors of TRF and permanently barring all Individual Defendants from re-election to the board;

(b) requiring each of the Individual Defendants to account, in amounts to be determined at trial, for violating their fiduciary and statutory duties as directors and/or officers of TRF;

(c) enjoining TRF and its directors from accepting additional horses into the TRF herd without the Court's approval;

(d) enjoining TRF and its directors from invading or otherwise violating the restrictions on the Endowment Fund set forth in the Endowment Agreement, including by pledging the Endowment Fund as collateral for a debt or violating its annual spending limit, without the authorization of the Executors or a court;

(e) appointing a temporary receiver for TRF, pending the reconstitution of its board; and

(f) granting Plaintiffs such other and further relief as the Court finds necessary and appropriate, including injunctive, monetary and declaratory relief as may be required in the interests of justice.

May 3, 2012

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Attorney for Plaintiffs

By: ______________________

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VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

DAVID E. NACHMAN, being sworn, says:

I am Enforcement Section Chief and Senior Counsel in the Charities Bureau of the office of Eric T. Schneiderman, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing complaint and know the contents thereof, which on information and belief, I believe to be true. The grounds for my belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Plaintiff is that Plaintiff is a body politic and the Attorney General is its duly authorized representative.

DAVID E. NACHMAN

Sworn to before me this
3rd day of May, 2012

Andrew P Davis

Notary Public

ANDREW P. DAVIS
NOTARY PUBLIC NEW YORK STATE
QUALIFIED IN RENSSELAER CO.
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